

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF**

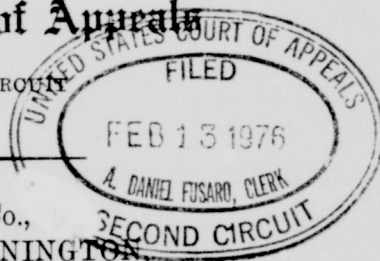


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# 75--7686

## United States Court of Appeals

FOR THE SECOND CIRCUIT



CHAS. KURZ & Co.,  
Owners of the S/S BENNINGTON

*Petitioner-Appellee,*

vs.

UNION OIL COMPANY OF CALIFORNIA,

*Respondent-Appellant.*

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P/S

### BRIEF FOR APPELLANT

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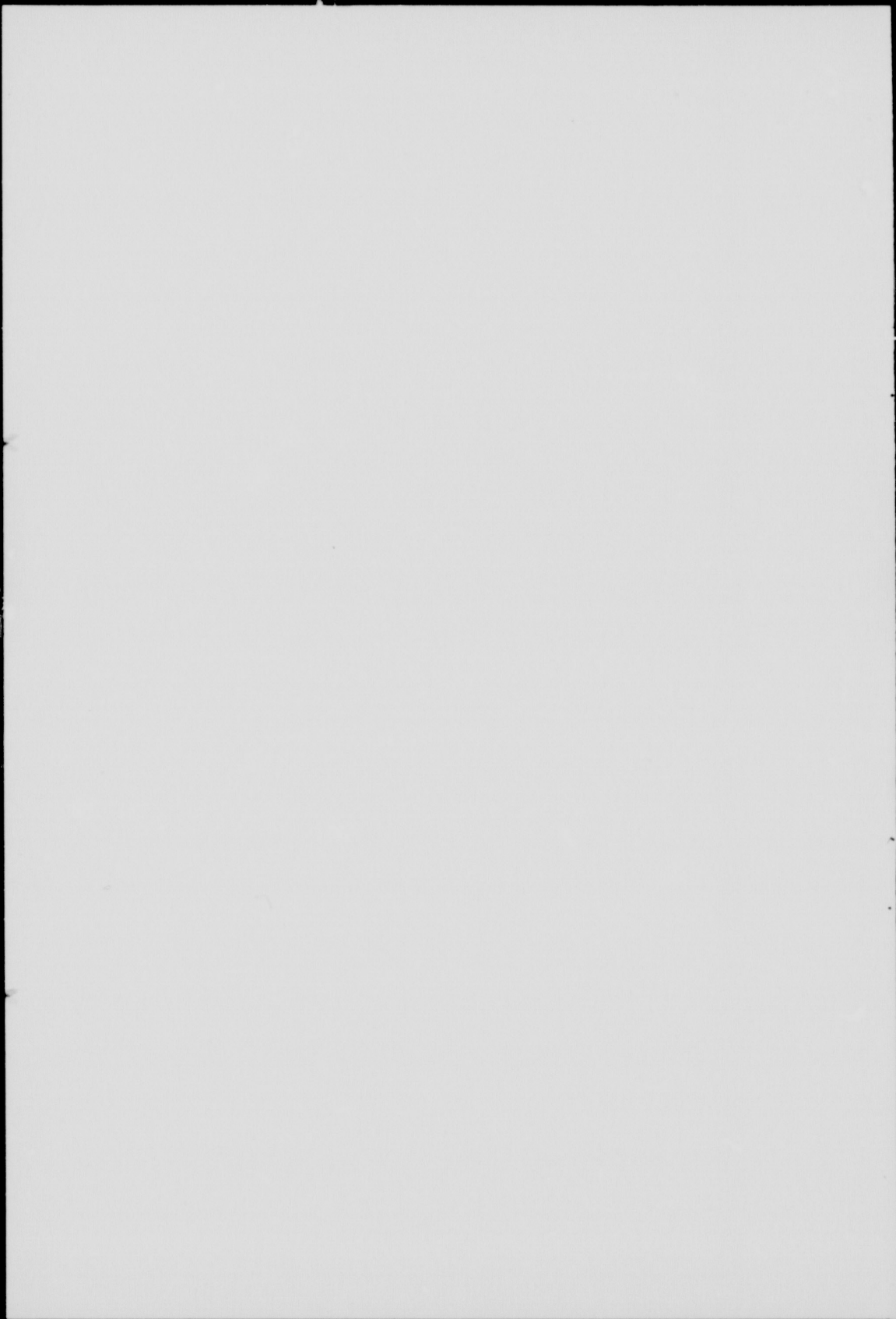
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## BRIEF FOR APPELLANT

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### Statement

This is an appeal by Union Oil Company of California (hereinafter Union) from an order granting a motion by Chas. Kurz & Co. (hereinafter Kurz), owners of the S/S BENNINGTON, to confirm an Arbitration Award (104A), and an order denying Union's motion to vacate the Arbitration Award, (105A), and the judgment entered thereon, (106A), entered in the Southern District of New York (Duffy, J.) against Union. *Chas. Kurz and Co. v. Union Oil Company of California*, Civil W.75-2764 (S.D.N.Y. 1975), filed November 18, 1975.

### The Question on Appeal

The appeal involves the question whether the Arbitration Award, on its face, discloses grounds upon which the Award should be vacated, and otherwise, whether arbitrators failed to abide by the Rules under which the arbitration was conducted.



### The Facts

The facts are entirely as testified to by Kurz's witnesses and the evidence introduced by Kurz during the arbitration. As noted in the arbitrators' Award:

The defense did not present any witnesses or evidence (11A).

Under a charter party dated August 27, 1968, the S/S BENNINGTON was chartered by Kurz to Union for trade "between ports on the U. S. West Coast, including Alaska" (10A).

During the charter period, the Master was directed by Kurz's agents to proceed to the Cook Inlet Pipeline Company terminal at Drift River, Alaska for a shipment of crude oil. The BENNINGTON proceeded from Portland, Oregon to Homer, Alaska where it arrived on January 14, 1969. The pilot boarded the BENNINGTON at the Homer pilot station, which is 74 miles from the Drift River terminal.

At the time the pilot boarded the BENNINGTON there were ice conditions prevailing in Cook Inlet and in the area of Drift River. The loading platform had reported to the pilot that ice conditions were present in and around the loading platform, and the pilot notified the Master that heavy ice conditions could be anticipated on route and approximately 25 miles from Homer the vessel encountered drift ice.

At approximately 50 miles from Homer, the vessel encountered "heavy drift ice" and both Master and pilot concur that, had the Master chose not to proceed, it was his prerogative to turn back.

Hard ice floes, approximately 100-200 yards across were encountered and the few patches of open water disappeared. The ice floe was so heavy the ship stalled and was completely surrounded by ice. Speed was reduced to minimize damage, the vessel's bow at times rode up on the ice, the vessel listed heavily, and was stopped by ice. Upon hitting the ice, the vessel would shear off, and it was necessary to back up and force its way through. The vessel was steered at various courses sometimes changing as much as 90° and throughout the vessel was laboring and vibrating.

The Master concluded there was no point in turning around and trying to go back through because that would have the same conditions. He decided to go on to the loading platform, although by loading, there is a tendency to do more damage to the ship because the vessel is pushing more weight as it forces ice. The ice conditions were constant up until the time the vessel docked, when difficulty was experienced in docking the vessel, and continued throughout the time the BENNINGTON was at the loading platform. Nevertheless, the Master kept the BENNINGTON at the loading platform through three changes of tide before deciding to depart. The vessel then proceeded back to Homer, again through heavy ice. (34A through 41A).

Ice damages of \$661,567 were sustained by the BENNINGTON and claim for this amount was asserted by Kurz against Union. The dispute was submitted to arbitration pursuant to the terms of the charter party (7A). (The terms of the charter party annexed to Kurz's motion to confirm the Arbitration Award are incomplete, and the full terms are annexed hereto as Exhibit A.)

Kurz maintained that the loading platform at Drift River was unsafe, and based their claim on Clause 28

of the charter party (11A). Union maintained the Master should have turned back when he began to encounter ice, and based his defense on Clause No: 53 of the charter party (11A). The clauses were set forth in the Award, (11A):

*Clause No. 28*—The cargo or cargoes shall be laden and discharged in any dock, or at any wharf or place that the Charterer or its Agents may direct where the vessel can always be safely afloat.

*Clause No. 53*—The vessel shall not be ordered to or bound to enter any icebound port or place or any place where lights, light ships, marks or buoys on vessels arrival are or are likely to be withdrawn by reason of ice or where there is risk that ordinarily the vessel will not be able on account of ice to enter, reach or leave the place. The vessel shall not be obliged to force ice. If on account of ice the Master considers it dangerous to enter or remain at any loading or discharging place for fear of the vessel being frozen in and/or damaged he shall have the liberty to sail to another place or port which is free from ice and there await Charterer's further instructions. The whole of the time occupied from time the vessel is diverted by reason of ice or other conditions until her arrival at an ice-free port as well as any detention by reason of ice or any of the above causes to count on hire but if Master has taken the decision to proceed and any ice damage shall consequently occur, vessel to go off hire during the repair period. Notwithstanding the foregoing, the vessel is not to be diverted to another port, unless Charterer so directs, provided Cook Inlet pilots are agreeable to taking



vessel into Nikiski or Drift River, it being understood that Master's judgment shall control as to whether or not vessel proceeds into said Nikiski or Drift River and hire shall not be suspended because of such exercise of Master's judgment not to proceed into Nikiski or Drift River.

Arbitrators' Award, (10A-17A), was rendered on June 3, 1975, (62A).

### **Appellant's Contentions as to the Arbitration Award**

Following the arbitration, that proceeded at its leisurely pace through three hearings, (12A), each running around two hours, over a period of two years and four months, i.e., February 5, 1953, (9A) to June 3, 1975, (62A), the arbitrators awarded the owner \$595,395.90.

Although charterer did nothing to impede this headlong rush for justice,

The defense did not present any witnesses or evidence (11A),

arbitrators were not deterred from awarding interest to owner up to February 15, 1975, (16A). No interest was awarded for time spent by arbitrators, including time extending beyond that permitted under the applicable Rules, in rendering a decision on June 3, 1975, after one meeting on April 29, 1975.

The Award apparently reflects the time devoted to it. It is confusing and vague. Under the caption "*Arguments*" (12A), it is stated:

The Charterer took the position that it was not possible to distinguish between ice damage en route to

the pier, at the pier, and coming away on the downward voyage (12A),

and then rambles off for two and one-half pages into what was "indicated" by the "evidence" (12A through 14A). The argument noted was by far the least of the number of arguments asserted by charterer, and both "Arguments" and what was "indicated" by the "evidence" are left far from complete.

It is, however, in the "*Award*" itself, (15A through 17A) distortions and errors are so conspicuous, that vacating the Award is warranted.

It is charterer's contention that the Award, on its face and without reference to extrinsic evidence, discloses:

1. Arbitrators have rewritten the charter party by implying conditions beyond and inconsistent with the express provisions of the Ice Clause, (Clause No. 53).
2. Arbitrators have precluded the charterer from offering material evidence on a controlling issue.
3. The awarding of a recovery for ice damage sustained on the outward voyage is in manifest disregard of the law.
4. It is conceded there was no evidence before the arbitration panel on which to conclude the Master relied on the Safe Berth warranty or was aware of the options available under the Ice Clause.

For these reasons, the Arbitration Award should be vacated. Further, and apart from these fatal defects apparent on the face of the Award, the Award should be vacated, in that:

5. Arbitrators' Award was not rendered within the time required under the applicable rules.
6. The Chairman of the arbitration panel failed to disclose the acquisition of prior knowledge bearing on the dispute.

### POINT I

#### **Arbitrators Have Rewritten the Charter Party by Implying Conditions Beyond and Inconsistent With the Express Provisions of the Ice Clause.**

The Arbitration Award, in its face, discloses that arbitrators have, in effect, rewritten the Ice Clause, by implying conditions at variance with the express wording contained therein. The Ice Clause, in explicit terms, provides that the Master's judgment shall control, and by implying qualifications to such terms, the Award provides it did not.

No reference to extraneous proof is necessary. The violence done to the precise terms contained in the Ice Clause is spelled out on the face of the Award. The terms of the Ice Clause are not general, standard charter party provisions, but were one of the "number of additional clauses on a rider" referred to by arbitrators (10A), and were in anticipation of a specific problem. Arbitrators note in their Award:

It was obvious that a steamer would encounter ice proceeding up Cook Inlet to Drift River in the winter . . . (15A).

It was precisely where ice was, in fact, encountered that the Ice Clause sets out the rights and responsibilities of the respective parties, and it was on the terms of this Clause that charterer relied. Arbitrators note in the Award:

The charterer based his defense on Clause No. 53, (the Ice Clause) . . . (11A).

Under the terms of the Ice Clause, the Master's judgment controlled when the BENNINGTON proceeded into Drift River, plowing through what amounted to one big ice jam for 50 miles up to, at, and returning from the loading platform. The Ice Clause provides, in part:

...it being understood that *Master's judgment shall control* as to whether or not vessel proceeds into said Nikiski or Drift River . . . , (Emphasis Added) (11A).

The provision is unqualified, and is explicit in assigning responsibility for proceeding through the ice.

Nevertheless, in their Award, the arbitrators "*feel*" that this wording "*implies*" a condition, the effect of which is a complete distortion of the clear wording of the Ice Clause. Arbitrators state:

While not relieving the Master's judgment of its control of the matter, the majority of the panel feel that the wording in Clause No. 53 implies that the vessel is to go through ice if it seems practical . . . (15A).

There is nothing in the wording of the Ice Clause to justify this conclusion, and for arbitrators to impose this condition, which they "*feel*" the Clause "*implies*", is to shift the respective rights and obligations of the parties, and to write a new contract.

The options open to the Master where ice was encountered were not implied. They were carefully spelled out in the Ice Clause:

If on account of ice the Master considers it dangerous to enter or remain at any loading or discharging

place . . . he shall have the liberty to sail to another place or port which is free from ice and there await charterers further instructions . . . (15A).

Without implying terms at variance with the provisions of the Ice Clause, the only possible result is that set forth in the Award's dissenting opinion:

Captain Stam dissents from the majority decision, believing that the Ice Clause No. 53 shields the charterers completely from liability, that had the Master a copy of the Charter Party, upon entering ice he would and should have refused to proceed further while seeking instructions from the charterer (16A).

In *United Steelworkers of America v. Enterprise W. & C. Corp.*, 363 U.S. 593, 597 (1960), the Supreme Court held:

(A)n arbitrator is confined to interpretation and application of the collective bargaining agreement; *he does not sit to dispense his own brand of industrial justice*. He may of course look for guidance from many sources, yet *his award is legitimate only so long as it draws its essence from the collective bargaining agreement*. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award. (Emphasis Added).

The Ice Clause assigns responsibility for proceeding into Drift River, without reference to whether it "seems practical" or "impractical". Arbitrators' implied conditions imposes an issue where none existed, and the whole contractual purpose to define responsibility becomes an illusion. Any conclusion of arbitrators could be justified by the simple expedient of "feeling" the wording "implies" a



condition at complete variance with the clear language of the contract, and what was "felt" to be "implied" becomes an escape hatch for the arbitrator "to dispense his own brand of justice".

The *Enterprise Case* involved a labor arbitration, but the principles set forth therein are equally applicable here. In *Swift Industries, Inc. v. Botany Industries, Inc.*, 466 F.2d 1125, 1129 (3d Cir. 1972), the court stated:

The conflicting contentions of the parties require us to apply to the commercial arbitration field those principles enunciated in a labor arbitration context by the Supreme Court in the case of *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed. 2d 1424 (1960).

In *Ludwig Honold Mfg. Co. v. Fletcher*, 405 F.2d 1123 (3d Cir. 1969), the court, commenting on *U. S. Steelworkers of America v. Enterprise W. & C. Corp.*, *supra*, stated at page 1126:

It elevated the arbitrator to an exalted status—emphasizing that there would be no interference with his award simply because a reviewing court differed with him in its interpretation of provisions of the contract. At the same time, it held a checkrein on him—*confining his zone of action to the four corners of the collective bargaining agreement.* (Emphasis Added).

It is apparent that here the arbitrators reached out beyond the "four corners" of the contract, and implied a condition made necessary to justify a conclusion not possible under the clear wording of the Ice Clause. The only intent spelled out is that "Master's judgment shall control", (11A). The effect of the qualification implied by arbitrators is that it did not. The two cannot be reconciled.

## POINT II

### **Arbitrators Have Precluded the Charterer From Offering Material Evidence on a Controlling Issue, and, as Such, the Award Should Be Vacated.**

The Award notes that "charterer based his defense on Clause No. 53", (11A), which provides:

. . . it being understood that Master's judgment shall control as to whether or not vessel proceeds into Nikiski or Drift River. (11A).

The arbitrators confirm in the Award that they are "not relieving the Master's judgment of its control of the matter", (15A), and then promptly proceed to do so, by creating an issue as to whether it seemed "practical" for the vessel to proceed through the ice, based upon what the arbitrators "feel" that the charter party provision "implies":

While not relieving the Master's judgment of its control of the matter, the majority of the panel feel that the wording in Clause No. 53 implies that the vessel is to go through ice if it seems practical . . . (15A).

The effect is to make the question of whether "it seems practical" to go through the ice a controlling issue on liability.

There was no prior suggestion that this was an issue, and charterer had no idea during the arbitration of offering evidence or arguments directed to such issue. In raising this issue, following the final arbitration hearing and submission of briefs, for the first time in rendering their Award, the arbitrators have, in effect, precluded the charterer from offering material evidence.

In *Chevron Transp. Corp. v. Astro Vencedor Compania Naviera*, 300 F.Supp. 179, 181 (S.D.N.Y. 1969), the court considered the submission of certain documents after arbitration hearings were concluded, and held:

To supply such documents after oral hearings have terminated could well prejudice the ability of the disadvantaged party, not only in cross examination of witnesses, but in the preparation of its own case.

In like manner, to pose an issue for the first time after the hearings were terminated did "prejudice the ability" of charterer, "not only in cross examination of witnesses, but in the preparation of its own case". The effect is tantamount to a refusal to hear pertinent and material evidence. In *Schlesinger v. Building Service Emp. Int. U., Local 252*, 367 F.Supp. 760, 764 (E.D. Pa. 1973), the court stated:

An award apparently may also be vacated if an arbitrator failed to comply with the requirements of due process, such as by refusing to hear material evidence . . .

In *Harvey Aluminum v. United Steelworkers of America*, 263 F.Supp. 488, 492 (D.C. Cal. 1967), the court stated at page 492:

"(B)oth parties have the right to assume that any arbitration hearing in which they may become involved, pursuant to their agreement, will afford them the opportunity of presenting all of their material evidence . . .

Charterer has been precluded from meeting the issue raised by virtue of the condition to the Ice Clause implied by arbitrators for the first time in the Award, and the Award should be vacated.



### POINT III

#### **The Awarding of a Recovery for Ice Damage Sustained on the Outward Voyage Is in Manifest Disregard of the Law.**

Assuming that the Master's judgment did not "control", the provisions of the Ice Clause notwithstanding, in obstinately proceeding through heavy ice conditions up to, at, and returning from the loading platform, the Award further discloses on its face a manifest disregard of the law by permitting a recovery for ice damage sustained en route from the loading platform.

The owner contended the charterer violated the "Safe Berth" provision of the charter party. The arbitrators' Award notes:

Essentially, the owners base their claim on Clause No. 28, maintaining that the berth at the Christie Lee platform at Drift River was unsafe. (11A).

The Safe Berth provision of the charter party provides:

The cargo or cargoes shall be laden and discharged at any dock, or at any wharf or place that the charterer or its agents may direct where the vessel can always be safely afloat. (11A).

There is no "Safe Port" warranty. The arbitrators, having concluded that the loading berth was unsafe, proceed to a statement of the law based on this conclusion:

The majority of the panel feel that there was a violation of the Safe Berth Clause in the charter party. (15A).

Consistent with this would be the awarding of ice damages sustained at the loading platform. It would be equally

consistent with this that ice damage, not sustained at the loading berth, would not be attributable to conditions present at the berth. A "safe port" and a "safe berth" are not synonymous. In an article by the Chairman of the present panel, (Reynolds, *The Concept of Safe Port*, Part 2, Lloyd's Maritime and Commercial L. Q., 179, 179-180 (1974), it is noted that the Safe Berth "warranty (is) frequently included in the same charter" as a "Safe Port" warranty, and goes on to state:

Some attempts at definition would appear to be in order at this point. *Webster's Unabridged Dictionary* gives the following:

PORT—A place to which vessels may report for purposes of commerce, especially to discharge or receive their cargoes. In this sense, the word varies in its significance with the context. It normally refers to a haven or harbor, but may be used to denote any place to or from which merchandise may be shipped, as a mere landing place.

Also, since we have pointed out that the question of the safety of a berth is frequently involved in similar disputes, we turn to *Webster* again:

BERTH—The place where a ship lies, whether at anchor or at a wharf.

Defining a safe port is not as easy. An excellent brief definition was that given by Dr. S. Mankabady in his talk before the Second International Congress of Maritime Arbitrators in Athens:

One common definition of a safe port is that it is one that will be safe for a particular ship to proceed,

lie always safely afloat while loading or discharging, and safely depart.

No "Safe Port" warranty was in the charter, and the panel then correctly disallowed recovery by the owner for damages not attributable to a breach of the Safe Berth warranty. The Award states:

The panel proposes to reduce owner's claim by 10% to allow for some damage on route upriver to the dock . . . (15A).

Nevertheless, having held the owner not entitled to damages not sustained at the unsafe berth, arbitrators then award damages sustained away from the berth on the outbound voyage:

. . . Most of the damage occurred while the vessel was being battered at the dock and *during the outward voyage*. (Emphasis Added) (15A).

It is one thing to misinterpret or misconstrue the law. It is quite another thing for arbitrators to set forth that charterers are liable for damages attributable to violation of the Safe Berth warranty and then, in manifest disregard of the law so stated, arbitrarily award damages not sustained at the berth.

In *Wilko v. Swan*, 346 U.S. 427, 436 (1953), the Court stated:

In unrestricted submissions, such as the present margin agreements on visage, the interpretations of the law by the arbitrators *in contrast to manifest disregard* are not subject, in the federal courts, to judicial review for error interpretation. (Emphasis Added).

In *San Martine Compania De Nav. v. Saguenay Term. Ltd.*, 293 F.2d 796, 801 (9th Cir. 1961), the Court stated:

We apprehend that a manifest disregard of the law in the context of the language used in *Wilko v. Swan*, supra, might be present when arbitrators understand and correctly state the law, but proceed to disregard the same.

In *Sobel v. Hertz, Warner & Co.*, 469 F.2d 1211, 1214 (2d Cir. 1972), the Court stated at page 1214:

But if the arbitrators simply ignore the applicable law, the literal application of a 'manifest disregard' standard should presumably compel vacation of the award.

The awarding of damages sustained on the outward voyage is in manifest disregard of the law as stated and understood by arbitrators on the face of the Award.

#### POINT IV

**It Is Conceded There Was No Evidence Before the Arbitration Panel on Which to Conclude the Master Relied on the Safe Berth Warranty or Was Aware of the Options Available Under the Ice Clause.**

Arbitrations held in the Award that there was "a violation of the Safe Berth Clause of the charter party", (15A), and having so held, casually concede the absence of evidence to support such conclusion, namely knowledge by the Master of the Ice Clause or the "Safe Berth" warranty or reliance on such warranty. Owner's witness, Captain Claude L. Williamson, Master of the BENNINGTON, testified:

Q. Did you have a copy of the charter party?

A. No, Sir, I did not have a copy of it.

Q. Were you familiar with the terms of the charter party?

A. Not particularly. I had read copies of charter parties but I was not familiar with that particular one as I did not have a copy. (26A).

The Ice Clause is not a standard provision contained in the Standtime form of time charter, which arbitrators' Award notes had "a number of additional clauses on a rider", (10A). Apart from this, it is one thing for arbitrators to misstate, not state, or ignore testimony or evidence in the record upon which an Award is based. It is quite another thing to acknowledge the facts necessary to support the proposition upon which liability is based simply aren't present. The Award states:

The charterer makes much of a point of the failure of the owner to give the master a copy of the charter party, so that the master did not know what the contractual provisions were that covered the voyage . . . *While the failure to furnish him with pertinent provisions of the charter is indeed surprising the majority of the panel feel that his actions would not have been different if he had received a copy of the charter provisions . . .* (Emphasis Added) (15A, 16A).

For the arbitrators to state a basis for liability, and then blandly discount the absence of evidence to support such conclusion, is no simple misinterpretation or misstatement of the law, and for arbitrators then to speculate what they "feel" the Master's actions would have been if he had known the charter party terms is not evidence. The dissenting opinion in the Award states:



(H)ad the master a copy of the charter party upon encountering ice he would and should have refused to proceed further while seeking instructions from the charterer. (16A).

In *St. Paul Fire & Marine Ins. Co. v. Eldracher*, 33 F.2d 675, 679 (8th Cir. 1929), *cert. denied*, 280 U.S. 604 (1929), the court quoted *Greenleaf on Evidence* (15 Ed.), Section 78, to the effect that:

(A)nd though arbitrators, ordinarily, are not bound to disclose the grounds of their award, yet they may be examined to prove that no evidence was given upon a particular subject.

Here, no examination is necessary to establish reliance on the charter party. The arbitrators concede that the Master was not furnished with the charter party.

#### POINT V

##### **Arbitrators' Award Was Not Rendered Within the Time Required Under the Applicable Rules.**

As proposed by the arbitration panel, the proceedings were conducted pursuant to the Rules of the Maritime Arbitration Society, which provide:

Section 32. Time—The Arbitrator(s) shall render his or their Award as expeditiously as possible but in no case later than 90 days from the receipt by the Arbitrators of the last evidence, transcript or brief, which ever shall be the last received. (56A).

Following the final hearing, briefs were submitted by the respective parties, the last of which on or about February 25, 1975 (22A). Nevertheless, no decision was "rendered"

by arbitrators until June 3, 1975, well after the 90 days had elapsed, (62A). Arbitrators acknowledged the time limit, set forth in the Rules to be binding and requiring strict compliance. In a letter from the Chairman of the panel, Mr. Reynolds, dated April 22, 1975 to counsel for the respective parties, the illness of one arbitrator was noted, and Mr. Reynolds stated:

There may well be a very extended delay, so that we request both counsel to waive the time provision of the Rules of the Society. (60A).

The waiver proposed in the letter of April 22, 1975 was not required, since arbitrators did, in fact, meet on April 29, 1975, and it is quite clear the time limitation contained in the Rules was not considered by arbitrators as advisory or in any way a flexible limitation, but rather, an explicit condition.

*Brotherhood of R. and S. Cl. etc., v. Norfolk So. Ry. Co.*, 143 F.2d 1015 [4th Cir. 1944] involved a labor dispute submitted to arbitration in accordance with The Railway Labor Act which provided that a period was to be fixed within which the Board shall make and file its Award. The arbitration agreement provided the Board shall make and file its Award prior to the expiration of the period of 15 days from the date on which the Board began its hearings. The Board did not file its Award within the 15 day period and Norfolk moved to vacate the Award.

The court found there was, in fact, no valid Award made in the case holding:

When the arbitrators failed to comply with the essential terms of the agreement on which their authority—indeed, their very existence as arbitrators

was grounded—and the time passed for the filing of the award, that body became functus officio. Any attempt at making an award thereafter was null and void. *Id.* at 1013.

In the present matter, the decision of the arbitrators constituted no award until it was “rendered”.

Render, v. To give up; to yield; to return, to surrender. *Black's Law Dictionary*, 4th Ed.

The Award herein was not given up, yielded, returned or surrendered, i.e., “rendered”, until the time to do so had expired, and should be vacated.

## POINT VI

### The Chairman of the Arbitration Panel Failed to Disclose the Acquisition of Prior Knowledge Bearing on the Dispute.

The arbitration proceedings were conducted under the rules for the Society of Maritime Arbitrators Inc., Sections 8 and 9 of which provide:

Section 8. Disqualification—No person shall serve as an Arbitrator if he has any financial or personal interest in the result of the arbitration *nor if he has acquired detailed prior knowledge of the dispute.*

Section 9. Disclosure By Arbitrator(s) of Disqualifying Circumstances—Preferably at the time of receiving his notice of appointment, but no later than the commencement of the first hearing, *a prospective Arbitrator is required to disclose any circumstance tending to raise a presumption of bias or which he believes might disqualify him as an impartial Arbitrator . . .* (Emphasis Added) (51A).

Mr. Reynolds, Chairman of the panel, (29A), making a statement of disclosure at the outset of the hearings, (29A), made no note that he had served as an arbitrator in another charter party dispute, involving the same Drift River terminal at which the BENNINGTON loaded in the present matter. (*The Achilles*, 72 AMC 1870; 73 AMC 666). This fact should have been disclosed.

In acting in the other arbitration, it is inescapable that Mr. Reynolds could bring preconceived notions to the present arbitration. There was the danger that, in considering testimony and evidence in the present matter, it would be difficult for Mr. Reynolds not to go outside the record and relate to the other arbitration.

The presence of Mr. Reynolds on the panel in the Achilles arbitration constitutes a situation where he would be in a position to acquire “detailed prior knowledge” of conditions relating to the present dispute, and conscious or unconsciously, could prove to be persuasive in consideration of the issues in the present matter.

In the Achilles arbitration, Mr. Reynolds held against the charterer, and a rather confusing statement in the present Award does reflect an apparent effort to make some distinction with another situation.

The panel received no evidence as to any changes that may have been made in the terminal since this incident in January, 1969, and the majority of the panel therefore only finds that this berth was, *at that time*, unsafe. (16A).

In *Hale v. Friedman*, 281 F.2d 635, 636 (D.C. Cir. 1960), and order agreed on by the parties provided an arbitration would be conducted in accordance with the rules of the American Arbitration Association. The Court stated:

We think the parties are bound by the order to which they agreed.

The failure of Mr. Reynolds to disclose his role in the Achilles arbitration for charterer's consideration constituted a failure to comply with the requirements set forth in the Rules under which the arbitration was conducted.

### CONCLUSION

The Arbitration Award on its face, discloses a failure by arbitrators to render a proper decision. In addition, arbitrators have failed to abide by the Rules under which the arbitration was conducted.

The orders of the District Court granting the motion to confirm the Arbitration Award and denying the motion to vacate the Arbitration Award, and the judgment entered thereon, should be reversed.

Respectfully submitted,

MENDES & MOUNT

*Attorneys for Respondent-Appellant*

JOHN J. SULLIVAN, Esq.,  
*Of Counsel.*



# TANKER TIME CHARTER PARTY

Contract No. 1796

New York, N. Y., August 27, 1968

IT IS THIS DAY MUTUALLY AGREED between CHAS. KURZ & CO., INC.

Owner/Chartered Owner (hereinafter called "Owner") of the good United States Steam/Motor Tank Vessel built by or to be built by Sun Shipbuilding & Drydock Company, called the "BENNINGTON", and to be so maintained during of 6,452 tons net register, classed ~~Al~~(E) ~~AMS~~ A.B.S. and to be so maintained during the currency of this Charter, fitted with engines of Nominal \_\_\_\_\_ Brake, 6,000 Shaft/~~or~~

the currency of this Charter, fitted with engines of Indicated H.P. as certified by Classification Society and capable of maintaining under normal working conditions an average sea speed of about 14.5 knots in moderate weather when fully laden, on an average consumption of 300 bbls. ~~(one (100,000))~~ Standard Diesel or similar grade/Standard Grade "C" or equivalent oil fuel per 24 hours, boilers being now fitted to burn efficiently liquid fuel of \*A.P.I. Gravity and \*Pensky-Martin Closed Cup Flash Point or better, and provided with cargo pumps, capable of discharging in the aggregate about 10,770/bbls. water at 100 lbs. pressure at 300° S existing International Regulations and to allow the vessel to communicate with land stations, and fitted throughout in all main and summer tanks or center and wing tanks and bunker compartments with heating coils of not less than 1 1/2 inch diameter and with sufficient area to have at least one square foot of heater coils per 150 cu. ft. of volume, the vessel being constructed and equipped as necessary under this

have at least one square foot of heater coils per 150 cu. ft. of volume, ~~\_\_\_\_\_~~ products in accordance with Panama Canal Navigation Regulations, Supplement No. 6, and Suez Canal with Crude Petroleum and/or its products in bulk, and

UNION OIL COMPANY OF CALIFORNIA, CHARTERER, as follows:

1. The Owner hereby declares that the Vessel can carry about 17,246 tons (of 2,240 lbs.) total deadweight (as certified by Classification Society) of cargo, bunkers, water and stores on assigned summer mean draft of 31 ft.  $\frac{1}{2}$  in. in salt water, conforming to the Coastwise Load Line Convention, and that her responding to a load line summer freeboard of 8 ft.  $\frac{1}{2}$  in. under present ~~Load Line~~ Regulations, and that her load line is marked and so placed as to admit of her being safely loaded to such draft, and that the Vessel has a total capacity for bulk cargo, after deduction of 2% for expansion, of 138,432 bbls ~~in~~ in main and summer tanks or center and wing tanks, exclusive of permanent bunkers, which have a capacity, after deduction of 2% for expansion, of 1455 tons ~~(of 2,240 lbs.)~~ of oil fuel.

2. The Owner hereby lets, and the Charterer hereby hires, the Vessel as herein described for the term of ~~about~~ 24 months  
~~, the Charterer having the option of continuing the Charter for a further period of~~  
~~by giving the Owner \_\_\_\_\_ months' written notice thereof previous to expiration of the first named term; hire to~~

commence when written notice from the Master has been given to the Charterer or its Agents ~~during office hours~~ that the Vessel is at its disposal at a U. S. West Coast port in such ready accessible dock, wharf or place where she can always safely lie afloat, as Charterer or its Agents may direct, the Vessel being then ready with holds and cargo tanks

clean and strong, and in every way fitted for the service and the carriage of ~~oil~~ and being on delivery tight, staunch and strong, ~~also having been surveyed and painted~~ and with pipe lines, pumps and heater coils in good working condition, so far as the same can be attained by the exercise of due diligence, and with full complement of Master, Officers and Crew for a vessel of her size and character, and due diligence to be exercised to maintain her in such state during the currency of this Charter to be employed ~~in the service of the War, trading between sea ports in such or those countries as the Charterer or his Agents may desire, subject to the usual War-time clauses, as per copy attached hereto, including Quebec, Montreal, Canada, between May 15 and November 15, and including the West-India ports, but including Hongkong, and also, Finland, upon payment by Charterer of any additional insurance premiums required by the Vessel's underwriters for Baltic Sea trading the vessel, and in trade to or from Antarctic Ocean, North American Lakes, Iceland, Greenland, Japanese possessions North of 42° N., South Georgia or South Sandwich, but not including those trading restrictions, Charterer shall be entitled to send the vessel around Cape Horn at any time of the year.~~

3. The Charterer shall pay for the use of the Vessel hire at the rate of **Seven Dollars and Eighty Cents (\$7.80)** per ton on Vessel's deadweight as per Clause 1 (one) per calendar month, payment to be made in advance semi-monthly

at New York, N. Y. Hire shall commence by check without discount, less any disbursements or advances made to the Master or Owner's Agents. Hire shall commence at the date of delivery of the Vessel as aforesaid and shall continue until the hour of her redelivery to the Owner (unless lost) at a U. S. West Coast port.

~~Hire shall be payable in United States Dollars and used as the current rate of exchange at which checks on London can be purchased from New York Banks.~~ Any hire paid in advance and not earned shall be returned to the Charterer.

4. In default of punctual and regular payment as herein specified, the Owner shall have the faculty of withdrawing the Vessel from the service of the Charterer, without prejudice to any claim it (the Owner) may otherwise have on the Charterer is pursuance of this Charter.

5. Hire shall not commence before **September 1, 1968** unless with Charterer's consent, and the Charterer shall have liberty to cancel this Charter should Vessel not be ready in accordance with the provisions hereof before **September 15, 1968**, said option of cancelment to be declared not later than the day of the Vessel's readiness.

6. The deadweight, bulk cargo cubic capacity, pumping capacity, speed and fuel consumption of the Vessel, as stipulated in this Charter, are representations by the Owner. Should actual performance of the Vessel show any failure to satisfy one or more of such representations the hire shall be equitably decreased so as to indemnify the Charterer to the extent of such failure, this Charter otherwise to remain unaffected.

7. Should the Vessel be on her voyage towards the port of redelivery at the time a payment of hire becomes due, said payment shall be made for such length of time as the Owner or its Agents and the Charterer or its Agents may agree upon as the estimated time necessary to complete the voyage, less disbursements arranged by Charterer for Owner's account, and less estimated value of fuel in bunkers at the termination of the voyage, and when the Vessel is redelivered to Owner any difference shall be refunded to or paid by the Charterer as the case may require.

8. In the event of loss of time from deficiency of men or stores, breakdown of machinery, interference by Authorities, collision, stranding, fire or other accident or damage to the Vessel, not caused by the fault of the Charterer, preventing the working of the Vessel for more than twenty-four consecutive hours, or in the event of loss of time from breach of orders or neglect of duty by the Master, Officers or Crew, or

DESCRIP.  
TION OF  
VESSEL

**DEAD.  
WEIGHT**

**PERIOD****DELIVERY**

## TRADE

**HIRE**

COMMENCE-  
MENT OF  
HIDE

ADJUST.  
MENT OF  
HIRE

## REDELIVERY

## OFF-HIRE

essel is to be traded between ports on the  
S. West Coast including Alaska

Crude Oil and/or dirty Petroleum Products maximum three grades, within Vessel's natural segregation and not requiring heat in excess of 1350 F.

from deviation for the purpose of landing any injured or ill person on board other than any who may be carried at Charterer's request, payment of hire shall cease for all time lost until the Vessel is again in an efficient state to resume her service and has regained a point of progress equivalent to that when the hire ceased hereunder; cost of fuel consumed while the Vessel is off hire hereunder, as well as all port charges, pilotages and other expenses incurred during such period and consequent upon the putting in to any port or place other than to which the Vessel is bound, shall be borne by the Owner; but should the Vessel be delayed or driven into port or to anchorage by stress of weather or on account of accident to or other consideration for her cargo, such delay, departure, or loss of time, shall be for Charterer's account. If upon the voyage the speed of the vessel be reduced, or her fuel consumption increased, by breakdown, casualty, or inefficiency of Master, Officers or Crew, so as to cause a delay of more than twenty four hours or an excess consumption of more than one day's fuel, hire for the time lost and cost of extra fuel consumed, if any, shall be borne by the Owner. Any delay by ice or time spent in quarantine shall be for Charterer's account, except delay in quarantine resulting from the Master, Officers or Crew having communications with the shore at an infected port, where the Charterer has given the Master adequate written notice of the infection, which shall be for Owner's account, as shall also be any loss of time through detention by authorities as a result of charges of smuggling or of other infraction of law by the Master, Officers or Crew.

9. ~~The time the Vessel is off hire during the original term of this Charter or any extension thereof, pursuant to the provisions of this Charter, shall be added to the original term or the extension during which the time off occurs, if the Charterer elects to do so and gives the Owner written notice of such election at least 30 days prior to expiry of the original term or extension during which the time off occurs, but time off during the original term may not be added to any extension thereof.~~

## LOSS OF VESSEL

10. Should the Vessel be lost or become a constructive total loss, hire shall cease on the day of her loss or constructive total loss, and if missing, from the date when last heard of, and any hire paid in advance and not earned shall be returned to the Charterer. If the Vessel is missing or off hire at the time when hire becomes payable, payment of said hire shall be suspended until safety is ascertained or the off hire period ceases.

## LIENS

11. The Owner shall have an absolute lien on all cargoes and subfreights for all amounts due under this Charter, and Charterer shall have a lien on the Vessel for all moneys paid in advance and not earned, and for the value of fuel in bunkers.

## ADVANCES

12. Any moneys advanced to the Master by the Charterer or its Agents or in payment of disbursements made for Owner's account to be ~~subject to 2 1/2% Commission and to be~~ deductible from hire money earned or to be earned, and Charterer to have a lien on the Vessel for same.

## DETENTION BY LEGAL ACTION

13. In the event of detention of the Vessel by Authorities at home or abroad in consequence of legal action against the Vessel or Owner whereby the Vessel is rendered unavailable for Charterer's service for a period of 30 days, unless brought about by the act or neglect of the Charterer, the Charterer, by prompt written notice, shall have the election to cancel this Charter or to suspend same until the service can again be resumed, without prejudice to any right of claim for damage which the Charterer may have in the premises. Payment of hire to cease during time the Vessel may be out of Charterer's service by the cause mentioned in this clause, unless the time out is less than 24 hours in which event there is to be no interruption in hire payments.

## DRY-DOCKING

14. ~~The Owner agrees to drydock and paint the Vessel's bottom about once every nine but not more than twelve months, and, when drydocking the Charterer agrees to send the Vessel to a port where she can be cleared of oil and gas and drydock and paint. In such event the Owner shall always be solely responsible for clearing the Vessel of oil and gas, but the expense and time thereof shall be for Charterer's account if drydocking the vessel is for the purpose of cleaning and painting bottom only, and for Owner's account if drydocking is for the purpose of effecting any repairs as well as cleaning and painting bottom. Incidental towages, pilotages, fuel, water and all other expenses of drydocking and painting shall be for Owner's account. In case of drydocking pursuant to this clause at a port where the Vessel loads, discharges or bunkers under Charterer's orders, hire shall be suspended from the time Vessel receives free pratique on arrival, if in ballast, or on completion of discharge of cargo, if she arrives loaded, until Vessel is again ready for service. In case Charterer sends the Vessel to a port for drydocking only, hire shall be suspended from the time of Vessel's arrival at the sea buoy inbound until her departure from the sea buoy outbound, and all port charges incurred and fuel and water consumed between these times are to be for Owner's account, including Agency fee, the Owner ~~shall be entitled to appointing its own agents at such port.~~~~

(See Clause 50(b))

## OWNER TO PROVIDE

15. The Owner shall provide and pay for all provisions, deck and engine room stores, galley and cabin stores and galley and crew fuel, and insurance on the Vessel; wages of the Master, Officers and Crew; consular fees pertaining to the Master, Officers and Crew; ~~all fuel used by the Vessel, if a motorship, and also \$ per month for heating quarters, etc.~~

## CHARTERER TO PROVIDE

Marine  
P & I

16. The Charterer (except during the period when the Vessel is off hire) shall provide and pay for all fuel except for galley and Crew as provided in Clause 15, and all fresh water if the Vessel is a steamer. The Charterer shall also pay for all port charges, light dues, dock dues, Panama and other Canal dues, pilotage, consular fees, except those pertaining to Master, Officers and Crew, tugs necessary for assisting the Vessel in, about and out of port for the purpose of carrying out this Charter, agencies, commissions, expenses of loading and unloading cargoes, and all other charges whatsoever except those herein stated as payable by the Owner. The Owner shall, however, reimburse the Charterer for any fuel used or any expenses incurred in making a general average sacrifice or expenditure, and for any fuel or water consumed during drydocking or repair of the Vessel.

## DUTIES OF THE MASTER

17. The Charterer shall accept and pay for all water in the Vessel's tanks (if Vessel is a steamer) and for all oil fuel in the Vessel's bunkers, upon commencement of hire, and the Owner shall pay for all water in the Vessel's tanks (if Vessel is a steamer) and for all oil fuel in the Vessel's bunkers, on the expiry of this Charter at current market prices of the ports where the hire begins and ends respectively, or at current market prices at the nearest recognized port where they may be secured.

18. The Master shall prosecute his voyages with the utmost despatch and shall render all reasonable assistance with the Vessel's Crew and equipment, overtime of Officers and Crew to be at Charterer's expense when incurred at request of Charterer or its Agents.

19. The Master, although appointed by the Owner, shall be under the orders and direction of the Charterer as regards employment of the Vessel, Agencies, or other arrangements.

20. If the Charterer shall have reason to be dissatisfied with the conduct of the Master, or Officers, the Owner shall, on receiving particulars of the complaint, investigate it, and if necessary make a change in the appointments.

21. The Master shall be furnished by the Charterer, from time to time, with all requisite instructions and sailing directions, and both he and the Engineers shall keep full and correct logs of the voyages, which are to be sent to the Charterer and its Agents, ~~and also one set of which are to be sent to the Charterer from each port of call.~~

## BILLS OF LADING

22. Bills of Lading are to be signed at any rate of freight the Charterer or its Agents may direct, without prejudice to this Charter, the Master attending daily, if required, at the offices of the Charterer or its Agents, to do so. The Charterer hereby agrees to indemnify the Owner against all consequences or liabilities that may arise from the Master, Charterer or its Agents signing Bills of Lading or other Documents inconsistent with this Charter, or from any irregularity in papers supplied by the Charterer or its Agents, or from complying with its or its Agent's orders.

## USE OF VESSEL

23. The whole reach and burthen of the Vessel (but not more than she can reasonably stow and safely carry) shall be at the Charterer's disposal, reserving proper and sufficient space for Vessel's Officers, Crew, Master's cabin, tackle, apparel, furniture, fuel, provisions and stores.

24. ~~The Charterer shall have the option of shipping lawful merchandise in cases and/or cans and/or other packages in the Vessel's hold, tween decks and/or other suitable space available, subject, however, to the Master's approval as to kind and character, amount and stowage. All charges for dunnage, lashing, stowing and discharging so incurred shall be paid by the Charterer.~~

## EQUIP-MENT

25. ~~The Charterer, subject to the Owner's approval, shall be at liberty to fit any additional pumps and/or gear for loading or discharge, and no cargo may require beyond what is on board at the commencement of the Charter, and to make the necessary connections with steam or water pipes, such work to be done at its expense, and such pumps and/or gear so fitted to be considered its property, and the Charterer shall be at liberty to remove it at its expense and in its time during or at the expiry of this Charter; the Vessel to be left in her original condition at the Owner's disposal.~~

## CONDITIONS OF TANKS

26. If, on delivery to Charterer at the inception of this Charter, the Vessel's tanks are clean and fit for the transportation of clean products, such as refined petroleum or naphtha, the Vessel is to be redelivered to the Owner at the expiry of this Charter in like condition. Similarly, if her tanks are soiled when delivered to Charterer the Vessel may be redelivered to the Owner with tanks in like condition.

and Owner shall pay Charterer a lumpsum of \$35.00 monthly for the galley fuel and fuel for heating quarters  
Owner agrees to furnish Charterer, at regular intervals, copies of Vessel's deck and engine log.



PREVIOUS CARGOES	27. The last two successive cargoes carried, or to be carried, by the Vessel immediately preceding her entering upon this Charter con-	149
	sisted, or will consist, of <u>Dirty Petroleum Products.</u>	150
	<u>proceed to, lie at and depart from</u>	151
SAFE BERTH	28. The cargo or cargoes shall be laden and discharged in any dock, or at any wharf or place that the Charterer or its Agents may direct	152
	where the Vessel can safely be affixed, <del>on any one side of the berth where the Vessel may have to lie exposed as usual and customary for</del>	153
	<del>such vessels of like tonnage and draft.</del>	154
DAMAGE TO OR CLAIMS ON CARGO	29. The Owner guarantees that the Vessel is constructed and equipped to carry, without admixture, at least two qualities or descriptions	155
	of oil; but subject to this, neither the Owner nor the Vessel shall be responsible for any admixture if more than one quality of oil is shipped,	156
	nor for leakage, contamination or deterioration in quality of the cargo unless the admixture, leakage, contamination or deterioration results	157
	from (a) unseaworthiness existing at the time of loading or at the inception of the voyage which was discoverable by the exercise of due	158
	diligence, or (b) error or fault of the servants of the Owner in the loading, care or discharge of the cargo.	159
INJURIOUS CARGO	<del>30. No injurious cargoes, including solids that are injurious to the Vessel, are to be shipped, nor any voyage to be undertaken of goods or</del>	160
	<del>cargoes loaded that would involve risk of seizure, capture or penalty by Rulers or Governments, (it being understood that Esso, Esso Extra,</del>	161
	<del>Fethyl Gasoline, Benzol, Cresosote, Molasses, and the various Vegetable Oils customarily carried in tank vessels, are not to be considered as</del>	162
	<del>injurious). Charterer undertakes to employ the Vessel to carry any other cargo than oil to indemnify the Owner against any damage</del>	163
	<del>thereof arising to such cargo owing to the Vessel having previously loaded oil, or to oil after having loaded other cargo.</del>	164
VOLATILE CARGOES	31. Cargo shall not be shipped which has a vapor pressure at one hundred degrees Fahrenheit (100° F.) in excess of thirteen and one-	165
	half pounds (13.5 lbs.) as determined by the current A.S.T.M. Method (Reid) D-323. Cargo having a flash point under one hundred and	166
	fifteen degrees Fahrenheit (115° F.) (closed cup) A.S.T.M. Method D-56 shall not be loaded from lighters but this clause shall not restrict	167
	the Charterer from loading or topping off Crude Oil from vessels or barges inside or outside the bar at any port or place where bar conditions	168
	exist.	169
NEGLIGENCE OF PILOTS, ETC.	32. The Charterer shall not be held responsible for losses sustained by the Owner or the Vessel through the negligence of pilots, tugboats,	170
	or stevedores, although engaged by the Charterer.	171
CLEANING BOILERS, ETC.	33. The Owner shall be allowed not exceeding <u>48</u> hours on hire to clean boilers or open up pistons and overhaul machinery	172
	every <u>12</u> months, if this work cannot be done during loading and discharging of cargo or while ballasting or	173
	simultaneously with drydocking or repairing or while waiting for berth or cargo. This time is not cumulative.	174
HOUSE FLAG	<del>34. The Charterer shall be allowed to fly its house flag and to paint the Vessel's funnel with its own colors, if desired, but at Charterer's</del>	175
	<del>expense.</del>	176
LAWS	35. This Charter shall, so far as possible, be governed by the laws of the flag of the Vessel, except in cases of general average, which	177
	shall be adjusted, stated and settled according to York/Antwerp Rules 1950 and, as to matters not provided for by these rules, according to	178
	the laws and usages at the port of New York. If a General Average statement is required, it shall be prepared at such port or place in the	179
	United States as selected by the Owner, unless otherwise mutually agreed, by an Adjuster appointed by the Owner and approved by the	180
	Charterer, who shall attend to the settlement and the collection of the General Average, subject to customary charges. General Average	181
	Agreements and/or security shall be furnished by Owner and/or Charterer, and/or owner and/or consignee of cargo, if requested. Any	182
	cash deposit being made as security to pay General Average and/or salvage shall be remitted to the Average Adjuster and shall be held by	183
	him at his risk in a special account in a duly authorized and licensed bank at the place where the General Average statement is prepared.	184
	Should the Vessel put into a port of distress or be under average, she is to be consigned to the Owner's Agents, paying them the usual charges	185
	and commissions.	186
	36. Any provision of this Charter to the contrary notwithstanding, the Owner shall have the benefit of all limitations of, and exemptions	187
	from, liability accorded to the Owner or Chartered Owner of Vessels by any statute or rule of law for the time being in force.	188
JASON CLAUSE	37. In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause	189
	whatsoever, whether due to negligence or not, for which, or for the consequence of which, the Owner is not responsible, by statute, contract	190
	or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the Owner in General Average to the payment of	191
	any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges in-	192
	curred in respect of the cargo. If a salving ship is owned or operated by the Owner, salvage shall be paid for as fully as if the said salving	193
	ship or ships belonged to strangers. Such deposit as the Owner or his agents may deem sufficient to cover the estimated contribution of the	194
	cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the	195
	carrier before delivery.	196
EXCEPTIONS	38. The Vessel, her Master and Owner shall not, unless otherwise in this Charter expressly provided, be responsible for any loss or dam-	197
	age arising or resulting from: any act, neglect, default or barratry of the Master, pilots, mariners or other servants of the Owner in the navi-	198
	gation or management of the Vessel; fire, unless caused by the personal design or neglect of the Owner; collision, stranding, or peril, danger or	199
	accident of the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or	200
	damage arising from inherent defect, quality or vice of the cargo; any act or omission of the Charterer or owner, shipper or consignee of the	201
	cargo, their Agents or representatives; insufficiency of packing; insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage	202
	of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of the Vessel unless caused by want of due diligence on the	203
	part of the Owner to make the Vessel seaworthy or to have her properly manned, equipped and supplied; or from any other cause of whatso-	204
	ever kind arising without the actual fault or privity of the Owner. And neither the Vessel, her Master or Owner, nor the Charterer, shall,	205
	unless otherwise in this Charter expressly provided, be responsible for any loss or damage or delay or failure in performing hereunder arising	206
	or resulting from: act of God; act of war; perils of the seas; act of public enemies, pirates or assailing thieves; arrest or restraint of princes,	207
	rulers or people, or seizure under legal process provided bond is promptly furnished to release the Vessel or cargo; strike or lockout or stop-	208
	page or restraint of labor from whatever cause, either partial or general; or riot or civil commotion. Vessel shall have liberty to sail with or	209
	without pilots, to tow or to be towed, to go to the assistance of vessels in distress and to deviate for the purpose of saving life or property	210
	or of landing any ill or injured person on board. This clause is not to be construed as in any way affecting the provisions for cessation of	211
	hire as provided in this Charter.	212
SALVAGE	39. All salvage moneys earned by the Vessel shall be divided equally between the Owner and the Charterer after deducting Master's,	213
	Officers' and Crew's share, legal expenses, hire of Vessel during time lost, value of fuel consumed, repairs of damage, if any, and any other	214
	extraordinary loss or expense sustained as a result of the service, which shall always be a first charge on such moneys.	215
WAR CLAUSES	40. No contraband of war shall be shipped, but Petroleum and/or its products shall not be deemed contraband of war for the purpose of	216
	this clause unless shipped or intended to be shipped to or intended for a country involved in war; nor shall the Vessel be required to enter	217
	any port that is in a state of blockade, or where hostilities are in progress, or any war zone, or zone deemed a danger zone in consequence of	218
	the existence of war, or actual hostilities, without the consent of the Owner, and if such consent be given then the Charterer will pay the cost	219
	of insuring the Vessel against all war risks in an amount equal to the value under her ordinary policy but not exceeding \$	220
	41. In the event of the existence of war, or actual hostilities and the continuance of this Charter, the Charterer shall assume the proved	221
	additional cost of wages and insurance properly incurred in connection with the Master, Officers and Crew as a consequence of such war or	222
	actual hostilities.	223
	42. Should the Vessel be requisitioned by any Government or Governmental Authority during the period of this Charter, she shall be off	224
	hire hereunder during the period of such requisition, and any hire or other compensation paid in respect of such requisition shall be for the	225
	Owner's account. The time the Vessel is on any such requisition shall count as part of the period provided in Clause 2 of this Charter.	226
LAY-UP	43. The Charterer shall have the option of laying up the Vessel for all or any portion (exceeding 30 days) of the charter period, in which	227
	case hire hereunder shall continue to be paid, but there shall be credited against such hire the whole amount which the Owner shall save (or	228
	reasonably should save) during such period of lay-up through reduction in expenses, less any extra expenses to which the Owner is put as a	229
	result of such lay-up.	230
	Should the Charterer, having exercised the option granted hereunder, desire the Vessel again to be put into service, the Owner will, upon	231
	receipt of written notice from the Charterer to such effect, immediately take steps to restore the Vessel to service as promptly as possible.	232
	The option granted to the Charterer hereunder may be exercised one or more times during the currency of this Charter or any extension	233
	thereof.	234
DAMAGES	44. Damages for breach of this Charter shall include all provable damages, and <u>reasonable</u> costs and attorney fees incurred in any action or pro-	235
	ceeding hereunder.	236

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TRATION

45. Nothing herein contained shall be construed as creating a demise of the Vessel to the Charterer. 237

46. All Bills of Lading issued hereunder shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated therein, and nothing therein or herein contained shall be deemed a surrender by the Owner of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of any Bill of Lading issued hereunder be repugnant to said Act to any extent, such term shall be void to that extent but no further. 238  
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47. If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Owner in the navigation or in the management of the Vessel, the owners of the cargo carried hereunder shall indemnify the Owner against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of said cargo, paid or payable by the other or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or Owner. The foregoing provisions shall also apply where the owners, operators or those in charge of any ships or objects other than, or in addition to, the colliding ships or object are at fault in respect of a collision or contact. 242  
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48.  $1\frac{1}{2}$  per cent commission shall be due by the Vessel and her Owner on all hire as paid under this Charter to Dietze Inc. 249  
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49. Any and all differences and disputes of whatsoever nature arising out of this Charter shall be put to arbitration in the City of LONDON/NEW YORK pursuant to the laws relating to arbitration there in force, before a board of three persons, consisting of one arbitrator to be appointed by the Owner, one by the Charterer, and one by the two so chosen. The decision of any two of the three on any point or points shall be final. Either party hereto may call for such arbitration by service upon any officer of the other, wherever he may be found, of a written notice specifying the name and address of the arbitrator chosen by the first moving party and a brief description of the dispute or differences which such party desires to put to arbitration. If the other party shall not, by notice served upon an officer of the first moving party within twenty days of the service of such first notice, appoint its arbitrator to arbitrate the dispute or differences specified, then the first moving party shall have the right without further notice to appoint a second arbitrator, who shall be a disinterested person, with precisely the same force and effect as if said second arbitrator has been appointed by the other party. In the event that the two arbitrators fail to appoint a third arbitrator within twenty days of the appointment of the second arbitrator, either arbitrator may apply to a Judge of any court of maritime jurisdiction in the city above mentioned for the appointment of a third arbitrator, and the appointment of such arbitrator by such Judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Until such time as the arbitrators finally close the hearings either party shall have the right by written notice served on the arbitrators and on an officer of the other party to specify further disputes or differences under this Charter for hearing and determination. Awards made in pursuance to this clause may include costs, including a reasonable allowance for attorney's fees, and judgment may be entered upon any award made hereunder in any Court having jurisdiction in the premises. 251  
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Clauses 50 through 63 as attached hereto form part and parcel of this Charter Party.  
IN WITNESS WHEREOF, THE PARTIES HAVE CAUSED THIS CHARTER TO BE EXECUTED IN DUPLICATE THE DAY  
AND YEAR HEREIN FIRST ABOVE WRITTEN. 268  
269

WITNESS TO SIGNATURE OF

Chas. Kurz

CHAS. KURZ & CO., INC.

WITNESS TO SIGNATURE OF

Loren F. Grandey

UNION OIL COMPANY OF CALIFORNIA



The following Clauses Nos. 50 through 63 are to be considered fully incorporated in Charter Party dated August 27, 1968, between CHAS. KURZ & CO., INC., owner of the S.S. "BENNINGTON", and UNION OIL COMPANY OF CALIFORNIA, Charterer:

50(a) DRYDOCKING

It is agreed that vessel will be drydocked at a U.S. West Coast shipyard, at a date to be mutually agreed by Owner and Charterer within the period October 1, 1968 and November 15, 1968. The period of drydocking is estimated to be about 25/30 days.

It is understood that vessel is presently only partially coiled and that any cargoes scheduled prior to drydocking must take into consideration vessel's limitations in respect to cargoes requiring heat.

It is further understood that prior to drydocking vessel's deadweight for purposes of loading cargo and billing freight shall be 17,136. Also the vessel's mean summer draft will be 30' 11-1/4".

It is further agreed that this charter shall be extended by the number of days required for this initial drydocking.

(b) DRYDOCKING

Owner to have the privilege of drydocking vessel for examination, painting and repairs, whenever same is considered necessary by the Owner during the currency of the Charter Party by giving notice 60 days prior thereto. It is understood that Owner's intention is to drydock once every 12/18 months under ordinary conditions. Vessel to be off hire during drydocking and repair period with time and expense for gasfreeing and diversion time, if any, and port expenses for Owner's account.

51. BREACH OF WARRANTIES

Cost of extra insurance for trading Alaska and other breach of Institute Warranties is to be for Charterer's account.

52. CLEANSEAS

Owner agrees to participate in Charterer's programme covering oil pollution avoidance. Such programme prohibits discharge overboard of all oily water, oily ballast or oil in any form of a persistent nature, except under extreme circumstances whereby the safety of the vessel, cargo or life at sea would be imperiled.

Upon notice being given to the Owner that Oil Pollution Avoidance controls are required, the Owner will instruct the Master to retain on board the vessel all oily residues from consolidated tank washings, dirty ballast, etc., in one compartment, after separation of all possible water has taken place. All water separated to be discharged overboard.

If the Charterer requires that demulsifiers shall be used for the separation of oil/water, such demulsifiers shall be obtained by the Owner and paid for by Charterer.

The oil residues will be pumped ashore at the loading or discharging terminal, either as segregated oil, dirty ballast or co-mingled with cargo as it is possible for Charterer to arrange. If it is necessary to retain the residue on board co-mingled with or segregated from the cargo to be loaded, Charterers shall pay for any deadfreight so incurred.

Should it be determined that the residue is to be co-mingled or segregated on board, the Master shall arrange that the quantity of tank washings be measured in conjunction with cargo suppliers and a note of the quantity measured made in the vessel's ullage record.

53. ICE.

The vessel shall not be ordered to or bound to enter any icebound port or place or any place where lights, light ships, marks or buoys on Vessel's arrival are or are likely to be withdrawn by reason of ice or where there is risk that ordinarily the Vessel will not be able on account of ice to enter, reach or leave the place. The Vessel shall not be obliged to force ice. If on account of ice the Master considers it dangerous to enter or remain at any loading or discharging place for fear of the Vessel being frozen in and/or damaged he shall have the liberty to sail to another place or port which is free from ice and there await Charterer's further instructions. The whole of the time occupied from time the Vessel is diverted by reason of ice or other conditions until her arrival at an ice-free port as well as any detention by reason of ice or any of the above causes to count on hire but if Master has taken the decision to proceed and any ice damage shall consequently occur, Vessel to go off hire during the repair period. Notwithstanding the foregoing, the Vessel is not to be diverted to another port, unless Charterer so directs, provided Cook Inlet Pilots are agreeable to taking Vessel into Nikiski or Drift River, it being understood that Master's judgment shall control as to whether or not Vessel proceeds into said Nikiski or Drift River, and hire shall not be suspended because of such exercise of Master's judgment not to proceed into Nikiski or Drift River.

54. WEATHER ROUTING.

Cost of Weather Routing of Vessel trading to and from Alaska to be for Charterer's account at Charterer's option.

55. OVERTIME.

~~It is understood and agreed that all crew overtime, including overtime for tank cleaning ordered by Charterer due to upgrading cargoes, is to be for Charterer's account.~~

56. DRY CARGO.

It is understood that no packaged goods or non-liquid cargo of any description is to be shipped under this Charter Party.



57. PRORATION-DEFENSE.

Owner is signatory to the Voluntary Defense Tanker Plan dated January 18, 1951, and performance of this Charter Party shall be subject to any obligations of Owner thereunder, as well as to compliance with all orders and requirements of any Agency of the United States Government relating to defense or preparation for defense, and compliance by Owner with such obligations or orders and requirements shall not give rise to any claim for damages for failure to perform, or for delay, or any other result arising therefrom.

58. REQUISITION.

If Vessel last named to service under this Charter Party is requisitioned, or ordered into other service, by any United States' Governmental Authority or through the work of any Committee formed under which Committee action is instigated by the Government or Governmental authorities, this Charter Party shall be suspended for the period of such requisition or other service and shall not be extended for any time the Vessel is out of Charterer's service due to same; however, if Vessel is redelivered to the Owner from requisition or that other service prior to the reasonable date on which it is calculated that the Vessel would under normal circumstances load her last cargo under this Charter Party, subject to Owner having the option to drydock the Vessel and make necessary repairs including the removal of installations made for account of Governmental authorities, Vessel shall, as soon as possible, be returned to service under this Charter Party and continue in it to load as many cargoes as Vessel can report for at loading port up to and including that date.

59. TRANSPORTATION TAX.

U. S. Federal Transportation Tax, if applicable, shall be for Charterer's account.

60. SUBLETTING.

Owner hereby gives advance approval to Charterer to sublet or assign this Charter provided that if the sublet or assignment is to aliens and if regulations of the United States Federal Maritime Administration, or Board, require their approval, same shall be subject to that approval.

61. SUBSTITUTION.

Owner has option, prior to or during any period of this Charter Party, of substituting another vessel or vessels of similar size, class and position and if such substitution is made, to withdraw vessel or vessels from the service under this Charter Party and to reinstate the originally named vessel if in similar position, and in as good condition with respect to cleanliness of tanks. In case of the loss of the vessel named to operate under this Charter Party, this Charter Party shall be considered cancelled as of the date of the loss of that vessel, unless substituted as herein provided, in which case this provision shall only apply to the last vessel named to operate under this Charter Party.

62. WAR CLAUSE.

Insofar as same is not covered by the Charter Party, the Clauses in sheet marked 62(b) hereto attached are to apply.

63. TOTAL EMPLOYMENT COST.

The rate of hire was calculated on the costs as of June 16, 1968, according

to which the total employment costs to the Owner for wages, etc., of the Master, Officers and crew of the Vessel (including overtime, pensions, vacations, service bonuses, social security and unemployment insurance) was \$2,153.31 per day, as detailed in Exhibit 63-A hereto attached. Any increase over this amount per day shall be reimbursed to Owner by Charterer. If the costs should run lower than this figure per day, Owner will credit Charterer with the savings made thereby.

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(26) War Clause. Insofar as same is not covered by the Charter Party, the following shall apply:

# CHAMBER OF SHIPPING 1937 WAR RISKS CLAUSES

1. The Vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destination, tonnage, waters, delivery or in any other wise whatsoever (including any direction or recommendation not to go to the port of destination or to delay proceeding thereto or to proceed to some other port) given by the Government of the nation under whose flag the Vessel sails or any other Government or local authority including any de facto Government or local authority or by any belligerent or by any State or organized body engaged in civil war, hostilities or warlike operations or by any person or body acting or purporting to act as or with the authority of any such Government, authority, State or organized body or by any committee or person having under the terms of the war risks insurance on the Vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such direction or recommendation, anything is done or is not done such shall not be deemed a deviation.

2. If subsequent to the signature of this Charter-party any port of loading mentioned in it be blockaded or if owing to any actual or threatened war, hostilities, warlike operations, acts of piracy or of hostility or malicious damage against this or any other vessel or its cargo by any person, body or State whatever, civil war, civil commotion, revolution, or the operation of international law, entry to any such port or loading of cargo there be considered by the Master or Owners in his or their discretion to be dangerous or prohibited, or it be considered by the Master or Owners in his or their discretion dangerous or impossible for the Vessel to proceed to or to reach such loading port or to pass through waters which the Vessel would ordinarily traverse on the way to such port, the Owners or their agent may require the Charterers to nominate another safe loading port, and unless the Charterers shall within 48 hours after they or their agents have received notice of such requirement nominate another safe loading port, the Owners may forthwith cancel the Charter-party and the Charterers shall pay the expenses lost by the Owners in purported fulfillment of the Charter-party. In the event of the Charterers nominating another safe loading port, all extra expenses in reaching and loading at such port and in reaching the stipulated discharging port shall be paid by the Charterers and/or Cargo Owners, and the Owners shall have a lien on the cargo for freight and all such expenses.

3. If upon the arrival of the Vessel at a port of loading the Master or Owners consider in his or their discretion at any time that owing to any of the matters mentioned in lines 1, 2, 3, 4 and 5 of Clause 2, it is dangerous for the Vessel to remain longer in the port or to load or complete loading or that the provision of cargo will be prevented or delayed, then if no cargo has been loaded the Owners may forthwith cancel the Charter-party and the Charterers shall pay the expenses lost by the Owners in purported fulfillment of the Charter-party; or if the Vessel is partly loaded, the Vessel shall be at liberty to sail with the cargo then on board, and freight shall be paid on such quantity, and the Master shall have liberty to carry other cargo for Owners' benefit and accordingly to proceed to and load or discharge at any other port or ports whatsoever, backwards or forwards, although in a contrary direction to or out of or beyond the ordinary route.

4. The Master shall not be required or bound to sign Bills of Lading for any blockaded port or for any port which the Master or Owners, in his or their discretion, consider dangerous or impossible to enter or reach.

5. If any port of discharge named in the Charter-party or in the Bills of Lading or to which the Vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or if owing to any of the matters mentioned in lines 2, 3, 4 and 5 of Clause 2 entry to any such port or discharge of cargo intended for any such port be considered by the Master or Owners in his or their discretion to be dangerous or prohibited or it be considered by the Master or Owners in his or their discretion dangerous or impossible for the Vessel to proceed to or to reach such discharging port or to pass through waters which the Vessel would ordinarily traverse on the way to such port, the cargo or such part of it as may be affected shall be discharged at any other safe port in the vicinity of the said port of discharge as may be ordered by the Charterers (provided such other port is not blockaded or that entry thereto or discharge of cargo thereat is not, in the Master's or Owners' discretion, dangerous or prohibited). If no such orders be received from the Charterers within 48 hours after they or their agents have received from the Owners a request for the nomination of a substitute discharging port, the Owners shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on.

6. If the Vessel arrives at a discharging port and the Master or Owners consider in his or their discretion at any time that owing to blockades or any of the matters mentioned in lines 2, 3, 4 and 5 of Clause 2 it is dangerous for the Vessel to remain longer in the port or to discharge or complete discharge, then, subject to Charterers' right to nominate another safe port as provided for in Clause 5, the Vessel shall be at liberty to leave the port with the cargo on board and to carry such cargo to any safe port which the Owners or Master may in their or his discretion decide on, and there discharge the same.

7. If by reason of or in compliance with any direction or recommendation under Clause 1 the Vessel does not proceed to the port or ports originally designated or to which she may have been ordered pursuant to the terms of the Bills of Lading, the Vessel may proceed to any safe port which the Master or Owners in his or their discretion may decide on and there discharge the cargo. In the event of cargo being so discharged or being discharged at any port under the provisions of Clauses 5 or 6 hereof, such discharge shall be deemed to be due fulfillment of the contracts of affreightment, and the Owners shall be entitled to freight as if discharge had been duly effected at the port or ports originally designated or to which the Vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching, and discharging the cargo at, any such other port shall be paid by the Charterers and/or Cargo Owners, and the Owners shall have a lien on the cargo for freight and all such expenses.

8. In these Clauses "blockade" shall be deemed to include any action which is announced as a blockade by a belligerent or by some State or organized body engaged in civil war, hostilities or warlike operations.

9. Clauses 1, 5, 6, 7 and 8 hereof shall be incorporated in all Bills of Lading signed pursuant to the terms of this Charter-party.

GEN-MAR-12-OP-233

December 2nd, 1937

(27) War Costs.

(For consecutive voyage charter.)

In case of war or hostilities (threatened or otherwise) the Charterer, in addition to paying the Owner the freight rate and other charges covered by this Charter Party, agrees to reimburse the Owner for:

- (a) Premium for war risk insurance on the Vessel in the same value as the total value of Owner's marine coverages, but not in excess of her then prevailing commercial value;
- (b) Premium for war risk Protection and Indemnity Insurance;
- (c) Premium for war risk insurance on all marine premiums reducing;
- (d) Premium for war risk insurance on freight money unless the Charterer advises the Owner that Charterer has arranged such insurance;
- (e) Premium for war risk insurance on crew's lives, crew's effects, crew's wages and any other insurances required through Government action or by Unions in connection with crew;
- (f) Premium for any other war risk insurances or other insurances which are considered necessary by the Owner;
- (g) Any war bonuses or increase in wages by reason of war, which the Owner is required to pay;
- (h) All other costs and losses incurred by reason thereof, including (but without limitation) delays in making the round voyage between port of loading and port of discharge including time in port, as well as the ballast voyage to the loading port or from the discharging port, in excess of normal peacetime operations;
- (i) The war risk insurance provisions of this clause shall be applicable only if H. C. Knight or other insurance broker appointed by Owner certifies that such insurance has been placed or is ordered on other American flag tankers of similar size owned by Owner or any associated companies, operating under single or consecutive voyage or time charters;
- (j) Unless otherwise stipulated, the provisions of this War Costs Clause shall apply only to such costs and losses as referred to as are over and above those in effect on the date of this Charter Party.

(For time charter, same as above, except change (d) and (h) to read):

- (d) Premium for war risk insurance on unpaid hire money, unless the Charterer advises the Owner that Charterer has arranged such insurance;
- (h) All other costs and losses incurred by reason thereof; Vessel to remain on full hire when delayed in port or on loaded or ballast voyage in excess of normal peacetime operations.

2/10/43

OK



FIRST ORIGINAL

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March 11, 1969  
Contract No. 1796

SS "BENNINGTON"  
Addendum No. 1  
Time Charter Party dated August 27, 1968  
between  
Union Oil Company of California, Charterer  
and  
Chas. Kurz & Co., Inc., Owner

IT IS HEREBY MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

Period of Time Charter Party is extended for approximately six (6) months, with new expiration date being March 21, 1971.

All other terms and conditions of subject Time Charter Party to remain unaltered.

Witness the  
signature of: Karl R. Kurz

P. Guschoff

Witness the  
signature of:

2. S. Brown

(EXECUTED IN DUPLICATE)

CHAS. KURZ & CO., INC.

Chas. Kurz

UNION OIL COMPANY OF CALIFORNIA

Don F. Brandy

D. CB  
H. L.